

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

	)	
MARJORIE FERRELL, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	No. C-1-01-447
	)	
v.	)	Judge Sandra S. Beckwith
	)	
WYETH-AYERST LABORATORIES,	)	Magistrate Judge Timothy S. Hogan
INC., <i>et al.</i> ,	)	
	)	
Defendants.	)	

**PLAINTIFFS' MOTION TO STAY  
PENDING APPEAL IN PARALLEL PROCEEDING**

Plaintiffs, by their attorneys, respectfully move this Court to stay this proceeding pending the appeal of this Court's summary judgment ruling in a parallel proceeding. In support thereof, plaintiffs state as follows:

1. On June 13, 2005, this Court entered an order granting Defendants' Motion for Summary Judgment in *J.B.D.L. Corp, et. al. v. Wyeth-Ayerst Labs, Inc. , et. al.*, Case No. 1:01-cv-00704, 2005 WL 139640 (S.D. Ohio June 13, 2005) ("*JBDL*"). On June 29, 2005, the *JBDL* plaintiffs appealed that decision to the United States Court of Appeals for the Sixth Circuit. (6th Cir. No. 05-3860).
  
2. The underlying facts and legal theories alleged in this proceeding are similar to those alleged in *JBDL*, which is brought on behalf of a class of direct purchaser plaintiffs, while this case is brought on behalf of classes of end payor plaintiffs. It is appropriate and in the interest of judicial economy to stay this case pending the Sixth Circuit's decision in appeal No. 05-3860.

3. Federal Rule of Civil Procedure 23(d) grants the Court broad discretion in managing the litigation of class actions. Moreover, a district court has the inherent power to stay proceedings, based upon its authority to manage its docket efficiently. *See In re Airline Pilots Ass'n. v. Miller*, 523 U.S. 866, 880 (1998) (quoting *Landis v. North Amer. Co.*, 299 U.S. 248, 254 (1936) (“[t]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance”)); *Wheelabrator Clean Water Sys. v. Old Kent Bank & Trust Co.*, Case No. 93-cv-1016, 1995 U.S. Dist. LEXIS 2330, at \*2 (W.D. Mich. Jan. 30, 1995). While there is no precise test used in this Circuit for when a stay is appropriate, district courts often consider the following factors: the need for a stay, the balance of potential hardship to the parties and the public, and the promotion of judicial economy. *See Wheelabrator*, 1995 U.S. Dist. LEXIS 2330, at \*2 (citing *Landis v. North American Co.*, 299 U.S. 248, 255 (1936)); *Ohio Environmental Council v. United States District Court*, 565 F.2d 393, 396 (6th Cir. 1977)).

4. Each of these factors is satisfied in this case. First, there is a need for a stay because many of the issues presently before the Sixth Circuit will undoubtedly impact this litigation.

5. Second, the balance of potential hardships weighs in favor of issuing a stay. Both plaintiffs and defendants – as well as this Court -- will

benefit from the issuance of a stay, as they will be able to avoid expending additional time and resources while the appeal is pending. Further, the public will not experience any hardship should the Court grant plaintiffs a stay.

6. Finally, and most importantly, a stay will promote the interests of judicial economy, as some of the overlapping issues between this case and the *JBDL* case will be decided by the Sixth Circuit. As this Court recognized in its *JBDL* opinion, circuit courts for other circuits have applied conflicting standards to the legal issues at issue in both cases, so the Sixth Circuit's ruling in *JBDL* will provide significant guidance in this litigation. Staying this case pending the *JBDL* appeal will thus enable the parties to this litigation to avoid relitigating issues currently before the Sixth Circuit and will therefore preserve the time and expenses of the parties and this Court.

7. Plaintiffs conferred with defendants before the filing of this motion. Defendants refused to consent to a stay unless plaintiffs also agreed to stay a parallel proceeding they have pending in California state court, *Blevins v. Wyeth, et al.*, Case No. 34380 (Cal. Sup. Ct.). Plaintiffs did not agree to this demand.

WHEREFORE, Plaintiffs respectfully request that this Court enter an order staying this litigation pending the *JBDL* appeal presently before the Sixth Circuit, and all other relief that this Court deems just and proper.

DATED: August 5, 2005

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

This is to certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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and I hereby certify that I have mailed by first-class U.S. Mail, postage prepaid, the document to the following non-CM/ECF participants:

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Dated: August 5, 2005

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I, Jennifer Fountain Connolly, hereby certify that I caused copies of the foregoing **Plaintiffs' Motion to Stay Pending Appeal of Parallel Proceeding** to be served on:

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via facsimile on or before 5:00 p.m. on this 4<sup>th</sup> day of August, 2005.

/s/ Jennifer Fountain Connolly  
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